THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NOs.17233 of 2005 AND BATCH

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Dated: 05th October, 2005.

Between :

1. P. Atchuta Rama Rao and 7 others. … Petitioners

And

1. The Govt. of A.P., rep. by its Secretary,
F & A (Coop) Dept., Secretariat, Hyderabad,
and others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NOs.17233, 17237, 17244, 17318, 17496 AND 20547 OF 2005

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COMON ORDER :

Since common questions of fact and law are involved, all these writ petitions are heard together and decided by this common order.

The writ petitioners in all these writ petitions are aggrieved by the orders passed by the 2nd respondent - District Collector (Cooperation) under Section 15-A of the A.P. Co-operative Societies Act, 1964 (for short, 'the Act') directing merger of the alleged Non-viable Societies with the Identified Focal Point Society.

For proper appreciation of the controversy involved, the facts stated by the petitioners in W.P.No.17233 of 2005 may be referred to.

The petitioners, eight in number, claim to be the members of Geddanapally Primary Agricultural Cooperative Society (PACS), Kirlampudi Mandal, East Godavari District. It is stated that the said society was formed in the year 1962 and was registered in the year 1977 and it appears that the society consists of 3,800 members. It is stated that four villages namely Gaddanapally, Bhupalapatnam, S. Thimmapuram and Srungarayunipalem fall within the area of operation of the society. It is claimed that the society was having business turn over of Rs.7 crores and during the year 2004-05 the rate of recovery was 89% and that the society was in a viable condition. While so, on 23-6-2005 by beat of tom-tom it was notified in the village that a General Body Meeting of the 5th respondent society will be held on 25-6-2005. Since the meeting was conducted with a short notice, most of the members could not be present for the meeting held on 25-6-2005. In spite of the same, the Chairman / Person-in-charge of the society with a view to favour local politicians proceeded with the General Body Meeting. As a matter of fact, only 110 members were present out of total members of 3,800. It is stated that though the writ petitioners had attended the meeting, except showing in the agenda that Gaddanapally P.A.C.S. was proposed to be merged with Veeravaram P.A.C.S., they were not informed nor furnished with any other details. When the Person-in-charge Committee of the society which was headed by the Branch Manager of the District Co-operative Central Bank asked the petitioners to express their willingness with regard to the proposed merger, the members present had expressed their unwillingness and a resolution was passed to that effect. That apart, about 150

members of the society including the writ petitioners made a representation dated 6-7-2005 to the 2nd respondent - District Collector (Cooperation), E.G. District, Kakinada explaining that the proposed merger of the society would be against their interest and also raising certain other objections. The said representation was received by the 2nd respondent on 7-7-2005. However, without considering the said objections, the second respondent, passed the impugned proceedings dated 25-7-2005 thereby directing merger of the Gaddanapally P.A.C.S. and two other societies of Kirlampudi Mandal with the Identified Focal Point Soceity i.e., Veeravaram P.A.C.S. of Kirlampudi Mandal w.e.f. 25-7-2005. The said order is under challenge in this writ petition.

Similar orders of merger in respect of other societies, passed on the same day i.e., 25-7-2005 by the Collectors of the respective Districts are questioned in the other writ petitions.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel for the petitioners primarily contended that since there was no proper publication of the proposed meeting dated 25-6-2005, the members of the respective societies were not afforded reasonable opportunity as required under Section 15-A of the Act and therefore the impugned orders of merger are arbitrary, illegal and violative of the principles of natural justice. It is also contended that the identification of Non-viable Societies by the District Collector was not in accordance with the guidelines prescribed under G.O.Ms.No.176, Agriculture & and Cooperative (Coop-V) Department, dated 14-6-2005.

In almost all the cases, the specific case of the petitioners is that the respective societies are Viable Societies and there is absolutely no justifiable reason to term them as Non-viable and on that ground initiating steps under Section 15-A of the Act for their merger with Focal Point P.A.C.S. It is also contended that the Focal Point P.A.C.S. having been situated at far off places, the members will be put to lot of

difficulties in approaching the office and it is not at all in the interest of the members of the societies.

It is relevant to note that the Government of A.P. having felt that there is need to restructure the Cooperative Credit Institutions for their strengthening and affective functioning for making them Viable has issued G.O.Ms.No.176, dated 14-6-2005 approving a scheme for the said purpose and formulating certain guidelines for implementation of the scheme. Under the said order, six norms prescribed by the Expert Committee have been adopted with certain modifications for identifying Viable Societies. The said six norms are as under :

Sl.No.	*Norm*	*Viable*
1.	*Positive Net Worth*	*Level of accumulated losses within owned funds*
2.	*Performance in managing resources*	*(i) Deposits not below the level of previous year and (ii) Ability to repay borrowed funds on time : A repayment rate of 75% or More (i.e,. there are either No overdue borrowings or overdues are within 25% of the total borrowings)*
3.	*Quality of loan Portfolio*	*(i) Recovery rate at 60% or above And*

(ii) Overdues over 3 years

to be less than 50% of total

overdues.

4. Cost of management (i) 2% or less to Working

Capital

or

(ii) 30% or less to Gross

profit, whichever is less

5. Profitability Net profit at least for one

of the last 3 years

6. Audit Classification With "C" class for at least 2

of the last 3 years.

As can be seen from the said guidelines, the societies which fulfill any of the three parameters extracted above, are to be identified as Viable Societies. In the alternative, the societies should satisfy the two norms prescribed by the Task Force constituted by Government of India, for identification of Viable Societies which are as under :

(i) Gross interest margin equal to or more than 50% of operating expenses, and

(ii) Recovery equal to or more than 50% of demand.

It is clear from the said guidelines that the Viable Societies shall be retained as it is without any addition / deletion of area of operations and all the Non-viable Societies in a Mandal are to be amalgamated / merged with one focal non-viable society in the same Mandal. It is also clear that no liquidation of any Non-viable Society is

permissible and that there shall not be merger of any Non-viable Society with a Viable Society. From clause 10 of the said guidelines, it is clear that the District Collector is the competent authority to identify the Viable and Non-viable Societies, Mandal-wise and to take action as per the provision of Section 15-A of the Act read with rule 11-A of A.P. Cooperative Societies Rules, 1964 (for short, 'the Rules'). As per Sub-clause (iii) of Clause-10, the District Collector shall issue a Notification calling for objections regarding the proposed amalgamation of Non-viable Societies after due identification of the Viable and Non-viable Societies Mandal-wise. Sub-clause (iv) states that the Management Committees of the respective Non-viable Societies shall call for meeting of the General Body and place the subject for decision as per the provisions of Rule 11-B of APCS Rules, 1964. Under Sub-clause (v), the Government exempted the respective PACS from the provisions pertaining to quorum, in exercise of the powers conferred under Section 123 of the APCS Act, 1964 in the interest of expeditious completion of restructuring.

The learned Counsel appearing for the petitioners does not dispute the fact that the procedure prescribed under Clause-10 of the guidelines has been followed and after calling for objections, decisions were taken in the General Body Meetings of all the alleged Non-viable Societies. However, it is vehemently contended that the action of the District Collector in identifying the respective societies as Non-viable Societies is not in accordance with the said guidelines and that at any rate before making such identification, the District Collector ought to have afforded reasonable opportunity to the members of the society to raise their objections, if any.

On the other hand, the learned Government Pleader contended that the Non-viable Societies were identified strictly in accordance with the norms prescribed under G.O.Ms.No.176, dated 14-6-2005 and thereafter as required under Section 15-A of the Act, all the societies identified as Non-viable Societies were afforded due opportunity to raise their objections and the impugned orders of merger were passed only after considering the said objections which were found to be untenable. Thus, it is contended that the writ petitions are misconceived and liable to be dismissed.

In the counter-affidavits filed on behalf of the respondents, it is explained that the

Government of Andhra Pradesh felt that there is a need to restructure the Cooperative Credit Institutions in the State for their strengthening and effective functioning and for making them viable. In this connection, the Government of Andhra Pradesh constituted an Expert Committee on 23-7-2003 to look into the functioning of Andhra Pradesh State Cooperative Bank, District Cooperative Central Banks and Primary Agricultural Cooperative Societies in the State and to suggest a package of reforms for restructuring of the Three-tier Cooperative Credit Institutions. The Expert Committee submitted its report to the Government of Andhra Pradesh on 28-1-2004 and suggested six norms for identifying viable societies. The Government of Andhra Pradesh accepted the same in principle on 27-3-2004. Subsequently, the Government of Andhra Pradesh adopted the said six norms with certain modifications for identifying the viable societies. It is also stated that the Government of India also constituted a Task Force Committee on 5-8-2004 on the revival of Co-operative Credit Institutions to formulate practical implementable plan of action to rejuvenate the Rural Cooperative Credit Structure in India. The Task Force Committee submitted its report to the Government of India on 4-2-2005 and suggested the following two norms for identifying viable societies.

(i) Gross interest margin equal to or more than 50% of operating expenses, and

(ii) Recovery equal to or more than 50% of demand.

In this regard, a Working Committee was constituted on 30-11-2004 with suitable terms of reference for submitting restructuring proposals to the Government of Andhra Pradesh in a time frame. The Working Committee submitted its proposals to the Government of Andhra Pradesh on 31-3-2005 and a supplementary report on 31-3-2005, duly considering the norms suggested by the Expert Committee and the Task Force Committee. The Government of Andhra Pradesh examined the said proposals and issued the specific guidelines in G.O.Ms.No.176, Agriculture & Cooperative (Co-op.V) Department, dated 14-6-2005 for the purpose of restructuring PACSs in the State. The Government of Andhra Pradesh issued direction to the District Collectors to identify the viable and non-viable societies Mandal-wise in their respective districts, basing on the viability norms mentioned in the above G.O. and to take action as per the provisions of Section 15-A of the Andhra Pradesh Co-operative Societies Act 7 of 1964 read with Rule 11-A of the Andhra Pradesh Co-

operative Societies Rules, 1964. It is also stated that the business turnover as narrated by the petitioners has no bearing whatsoever with the process of amalgamation in question, as mere business turnover does not reflect the financial health of a Co-operative Institution nor has anything to do with the parameters prescribed by the Government in G.O.Ms.No.176, dated 14-6-2005. It is also stated that the merger proposed in the orders of the District Collectors identifying the Focal Point PACS is acceptable to majority of the farmers in the area and therefore the objections raised by the petitioner societies are untenable.

It is relevant to note that Section 15-A of the Act specifically deals with identification of viability of societies and consequences thereof. As per Sub-section (1), if the Registrar is of the opinion that in respect of a society or societies which are in receipt of State aid, it is necessary to amalgamate or merge any society with any other such society or to divide and restrict or transfer the area of operation of a society or to liquidate a society, he may identify the viable and non-viable societies which may be retained or divided with consequential restriction of the area of operation or the transfer of such area or amalgamate or liquidate as the case may be. Thus, the area of operation of each such society or societies to be retained, divided or amalgamated with any other society has to be specified by a notification to be published in the prescribed manner inviting objections or suggestions from the societies or any members, depositors, creditors, employees or other persons concerned with the affairs of each such society to be received within 21 days from the date of publication of the notification. The purposes for which such amalgamation or merger may be affected were also enumerated under Sub-section (1) of Section 15-A of the Act. After receiving the suggestions or objections, if any, the Registrar after making necessary enquiry has to make an order and publish it in the prescribed manner. As per Sub-section (3) of Section 15-A of the Act, the assets of such amalgamated or divided society shall stand transferred to and its liabilities shall devolve on, the society with which it is amalgamated.

So far as the manner of publication of the notice as well as final order is concerned, Rule 11-A of the A.P. Co-operative Societies Rules provides that the Registrar of Co-operative Societies shall publish the notification under Section 15-A of the Act and final order under Sub-section (2) of Section 15-A by affixture in the

office of the Divisional Co-operative Officer and in the respective Offices of the Society or Societies affected by such amalgamation and also in the Gram Panchayat and Mandal Revenue Offices situated in the area of operation of societies affected by such amalgamation.

A perusal of Section 15-A of the Act read with Rule 11-A of the Rules makes it clear that the members, depositors, creditors, employees or other persons concerned with the affairs of the society shall be provided an opportunity to put-forth their version by inviting objections from them with regard to the proposed amalgamation. The said notification inviting objections shall specify the area of operation of each such society or societies to be amalgamated with any other society indicated in the notification.

There can be no dispute about the fact that in the instant cases, the procedure as prescribed under Section 15-A read with Rule 11-A has been followed since admittedly there was publication of notification inviting objections from the members of the respective societies. As a matter of fact, all the petitioners have submitted their objections and most of them have also participated in the General Body Meeting in which the concerned societies have passed the resolutions opposing the proposed amalgamation.

The further grievance of the petitioners appear to be that before identifying the Non-viable Societies, the members of the societies were not given any opportunity to raise their objections. It is contended that as a matter of fact the respective societies are all viable and therefore the action of the respondents in directing amalgamation treating such societies as Non-viable Societies is arbitrary and illegal. It is also their contention that in spite of the fact that specific guidelines were issued under G.O.Ms.No.176, dated 14-6-2005, the same were not made known to the members of the societies and while keeping them in dark, with a mala fide intention to help the political parties, the societies in question were erroneously identified as ‘Non-viable Societies’.

The learned Counsel for the petitioners does not dispute the fact that there is no provision under the statute which provides for any specific procedure to be followed for identifying the Non-viable Societies. Even under the guidelines issued under G.O.Ms.No.176, dated 14-6-2005, there is no requirement to provide an opportunity to the members of the concerned societies. Undoubtedly, it is for the concerned District Collector to identify the Viable and Non-viable Societies after applying the norms prescribed under G.O.Ms.No.176, dated 14-6-2005.

However, the learned counsel for the petitioners while placing reliance upon a Full Bench decision of this Court in NAGESWARARAO v. GOVT. OF A.P. contended that since the notices issued by the respondents with regard to the proposed amalgamation in all the cases were stereo-typed and bald notices without indicating the reasons nor anything about the guidelines, the same are not consistent with the principles of natural justice. Thus, according to the learned Counsel, the notices were defective and therefore the consequential impugned proceedings of merger are liable to be set aside on that ground alone.

In NAGESWARARAO'S case (1 supra) the Full Bench was dealing with a batch of cases in which the constitutional validity of Section 15-A of the Act was questioned. One of the grounds raised by the petitioners therein was that the notices published with regard to the proposed merger under Section 15-A did not contain the particulars or reasons for the said proposal and that the guidelines on the basis of which the said notices were issued were not made available to the members of the societies. In the said context, the Full Bench held that the notice published should be one which should afford a reasonable opportunity to the affected persons to make effective representations and since the notices are bald notices and no reasons were given nor the guidelines were indicated nor G.Os. were enclosed, the said notices were not consistent with the principles of natural justice.

In the instant cases, may be that the copies of G.O.Ms.No.176, dated 14-6-2005 were not enclosed to the notification dated 20-6-2005 under which objections / suggestions were invited against the proposed merger. However, it cannot be said that the necessary particulars were not published. A perusal of the said notifications

show that the same contained the necessary particulars together with the reasons for the proposed merger. That apart, the Focal Non-Viable Society and the other Non-viable Societies proposed for merger along with the area of operations of the respective societies were also clearly specified in the Annexure to the Notification. A perusal of the resolutions passed by the respective societies make it clear that all the members were very well aware of the contents of G.O.Ms.No.176, dated 14-6-2005, inasmuch as in the resolution, it was clearly stated that the respective societies had recovery rate of more than 60% and that they were able to repay the borrowed funds on time. The said fact itself shows the attempt on the part of the societies to make out a case that they have fulfilled the norms prescribed under G.O.Ms.No.176, dated 14-6-2005. At any rate, they never raised such an objection in the General Body Meeting. Hence, the mere ground that the copy of the guidelines under G.O.Ms.No.176, dated 14-6-2005 were not furnished along with the notification dated 20-6-2005 is of no consequence.

In the facts and circumstances of the case, I am of the opinion that the members / societies were afforded a reasonable opportunity to raise their objections effectively and they were not prejudiced in any manner whatsoever. The ratio laid down by the Full Bench in the above decision in the particular facts and circumstances with which the Full Bench was dealing, has no application to the cases on hand.

Then, the only question that remains for consideration is whether the impugned orders of merger suffer from any infirmity warranting interference by this Court under Article 226 of the Constitution of India.

In the light of the object with which Section 15-A of the Act was introduced into the Act in the year 1976 with particular reference to the reasons specified in G.O.Ms.No.176, dated 14-6-2005 while prescribing the guidelines for implementation of the scheme, it is clear that the whole exercise has been undertaken by the Government on the basis of a policy decision to restructure the Cooperative Credit Institutions in the State for their strengthening and effective

functioning and for making them viable. For the said purpose, an Expert Committee was constituted which was suggested a package of reforms and on the basis of the report of the said Expert Committee, norms were prescribed for identifying the Viable and Non-viable Societies. That apart, the Task Force Committee constituted by the Government of India for the purpose of revival of Cooperative Credit Institutions also submitted a report to the Government of India suggesting two norms for identifying Viable Societies. Hence, it cannot be said that the power conferred on the 2nd respondent to identify the Viable and Non-viable Societies is unguided, but the exercise has to be done strictly in accordance with the norms suggested by the Expert Committee constituted by the State as well as Task Force Committed constituted by the Government of India and in the manner prescribed under G.O.Ms.No.176, dated 14-6-2005. There is no provision under the statute which provides for identification of the viability of the societies. What is provided under Section 15-A of the Act is only with regard to merger or amalgamation of the Non-viable Societies. In the cases on hand, admittedly, the procedure prescribed under Section 15-A of the Act has been scrupulously followed. It is true that the societies concerned by way of resolutions opposed the proposed merger. However, most of the objections were on the ground that the Focal Point Non-Viable Society is far off and it would not be in the interest of their societies. Such objections being extraneous to the essential policy of the State are untenable.

Even with regard to the objection raised in some of the matters that the societies in question cannot be termed as 'Nonviable Societies', as noted above, under G.O.Ms.No.176, dated 14-6-2005, specific norms were prescribed in accordance with which the 2nd respondent has to identify the Viable and Non-viable Societies. When the competent authority in exercise of such power has concluded that the societies in question are Non-viable, the law is well settled that this Court would decline to interfere with such decision in exercise of jurisdiction under Article 226 of the Constitution of India except where a clear case is made out to show that the decision making process is vitiated by mala fides or unreasonableness. This Court will never sit in appeal against such decision, but merely reviews the manner in which the decision was made. Since the petitioners failed to establish any of the said elements and particularly since the decision cannot be said to be in contravention of principles of natural justice or any statutory provision, I am unable to

hold that the decision of the District Collector that the societies in question are non-viable suffers from any infirmity.

It is relevant to note that the petitioners have not challenged the policy of the State regarding the merger of the Non-viable Primary Agricultural Cooperative Societies, but they are only assailing the orders of merger on the ground that the same are arbitrary, illegal and in violation of the principles of natural justice.

As stated above, since the petitioners failed to make out any case to establish that the impugned orders are vitiated on any of the above grounds, the relief as prayed for cannot be granted. The Writ Petitions are devoid of any merit and accordingly the same are dismissed. No costs.

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5TH October, 2005.

Note:- Office is directed to put up a Copy of this

Common Order in the Writ Petition Nos.17237,

17244,17318, 17496 AND 20547 OF 2005,

after signatures of the Hon'ble Judge.

(B/O)

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THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION NOs.17233, 17237, 17244, 17318, 17496 AND 20547 OF 2005

5TH OCTOBER, 2005.